



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

June 10, 2021

**APPLE NEW ENGLAND, LLC
D/B/A APPLEBEE'S NEIGHBORHOOD GRILL & BAR
214 BROAWAY
SAUGUS, MA 01906
LICENSE#: 00024-RS-1078
VIOLATION DATE: 3/05/2020
HEARD: 12/3/2020**

After a hearing on December 3, 2020, the Commission finds Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 count). Therefore, the Commission **suspends the license for a period of one (1) day to be served.**

The suspension shall commence on Monday, July 26, 2021 and terminate on Monday, July 26, 2021. The license will be delivered to the Local Licensing Board or its designee on Monday, July 26, 2021 at 9:00 A.M. It will be returned to the Licensee on Tuesday, July 27, 2021.

You are advised that pursuant to the provisions of M.G.L. c.138 § 23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

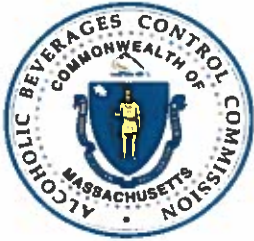
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Katelyn Quinn, Investigator
Dennis Keefe, Investigator
John Connell, Esq.
Administration, File



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DECISION

**APPLE NEW ENGLAND, LLC D/B/A APPLEBEE'S NEIGHBORHOOD GRILL & BAR
214 BROAWAY
SAUGUS, MA 01906
LICENSE#: 00024-RS-1078
VIOLATION DATE: 3/05/2020
HEARD: 12/3/2020**

Apple New England, LLC d/b/a Applebee's Neighborhood Grill & Bar (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Thursday, December 3, 2020, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (1 Count). The above-mentioned occurred March 5, 2020 according to Investigator Quinn's Report.

The following documents are in evidence:

1. Investigator Quinn's Investigative Report;
2. Copy of Form 43 Transfer of License Approval, 10/19/2011;
3. Copy of Underage's Genuine Driver's License;
4. Bar Receipt, 3/5/2020.

A. Apple American Group's Manager Guide 2020.

There is one (1) audio recording of this hearing.

FINDINGS OF FACT

1. On Thursday, March 5, 2020, at approximately 10:55 p.m., Investigators Keefe and Quinn ("Investigators"), conducted an investigation of the business operation of Apple New England, LLC d/b/a Applebee's Neighborhood Grill & Bar to determine the manner in which its business was being conducted. (Testimony, Exhibit 1)

2. Inside the licensed premises, Investigators observed two (2) youthful appearing female individuals seated at a table, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal drinking age. Id.
3. Underage #1, actual date of birth 5/25/1999 (age 20), was in possession of a mixed drink, Jameson whisky and ginger ale. She informed Investigators she did not have her identification with her but rather it was in her car. When asked if she was over 21 years of age, she admitted she was not. Underage #1 stated that the server did not ask her for identification before serving her an alcoholic beverage. Underage #1 eventually provided Investigators with her Driver's License. (Testimony, Exhibit 3)
4. The second female, actual date of birth, 10/27/1998 (age 21) provided Investigators with her Massachusetts driver's license showing she was of legal drinking age. (Testimony, Exhibit 1)
5. Investigators spoke to the employee who served the two (2) female individuals and informed her that one of the individuals was underage. Id.
6. The Investigators also spoke with the general manager who identified himself as Paul and advised him of the violation and advised him that a report would be filed with the Chief Investigator for further review. (Testimony, Exhibit 1)
7. Paul Benko, General Manager for the Licensee, attended the Commission hearing and testified as to the extensive training all Licensee employees undergo and the requirement that all patrons produce identification when ordering an alcoholic beverage. Mr. Benko stated that he interviewed the server about the underage patron found to be in possession of an alcoholic beverage. Mr. Benko testified the patron had not been asked to produce identification and explained a determination had been made by the server that she had examined the underage patron's identification on a prior visit to the licensed premise and believed she was over 21 years of age. The server has since been terminated from her position. (Testimony)
8. The Licensee has held a license under M.G.L. c. 138, § 12 since 2011 with no prior violations.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted ... to serve the public need and ... to protect the common good." M.G.L. c. 138, § 23. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The Licensee is charged with a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: Chapter 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age. A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that “[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not.” The law is well-settled that,

under the regulation [204 C.M.R. 2.05(2)], the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is “bound at his own peril to keep within the condition of his license.” Commonwealth v. Gould, 158 Mass. 499, 507 (1893); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter.

Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985). A licensee is responsible for illegalities that occur on the licensed premises. See id.

Massachusetts General Laws, Chapter 138, § 34C states, in pertinent part, that: “Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished.” M.G.L. c. 138, § 34C. Direct evidence was presented through the testimony of Investigator Quinn as to an individual under the age of 21 found to be in possession of an alcoholic beverage on the licensed premise. The Licensee acknowledged the patron was not asked to produce proof of legal drinking age and did not dispute she was in possession of an alcoholic beverage.

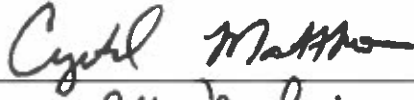
The Licensee argued the employee acted reasonably in that she had requested and examined the patron’s Massachusetts state issued identification in the past, and most recently within a month of the Investigator’s visit and had determined the patron to be of legal drinking age. The Commission is persuaded by the evidence that Underage #1 was younger than 21 years of age and was in possession of an alcoholic beverage in the licensed premises. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) – Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage by a person under 21 years of age (1 count).

CONCLUSION

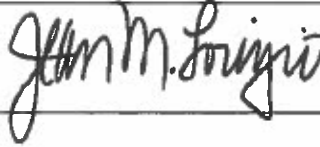
Based on the evidence, the Commission finds the Licensee violated of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: M.G.L. Ch. 138, § 34C Possession of an alcoholic beverage by a person under twenty-one years of age (1 Count). Therefore, the Commission **suspends the license for a period of one (1) day to be served.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Dated: June 10, 2021

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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